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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

NO. 307

NORA ALICE ADKINS, LOIS CARTER BALDWIN, SALLIE E. BARKER and LELIA Z. ADAMS,
PETITIONERS

v.

J. W. HAMILTON, AS TAX COLLECTOR OF JEFFERSON COUNTY, ALABAMA
RESPONDENT

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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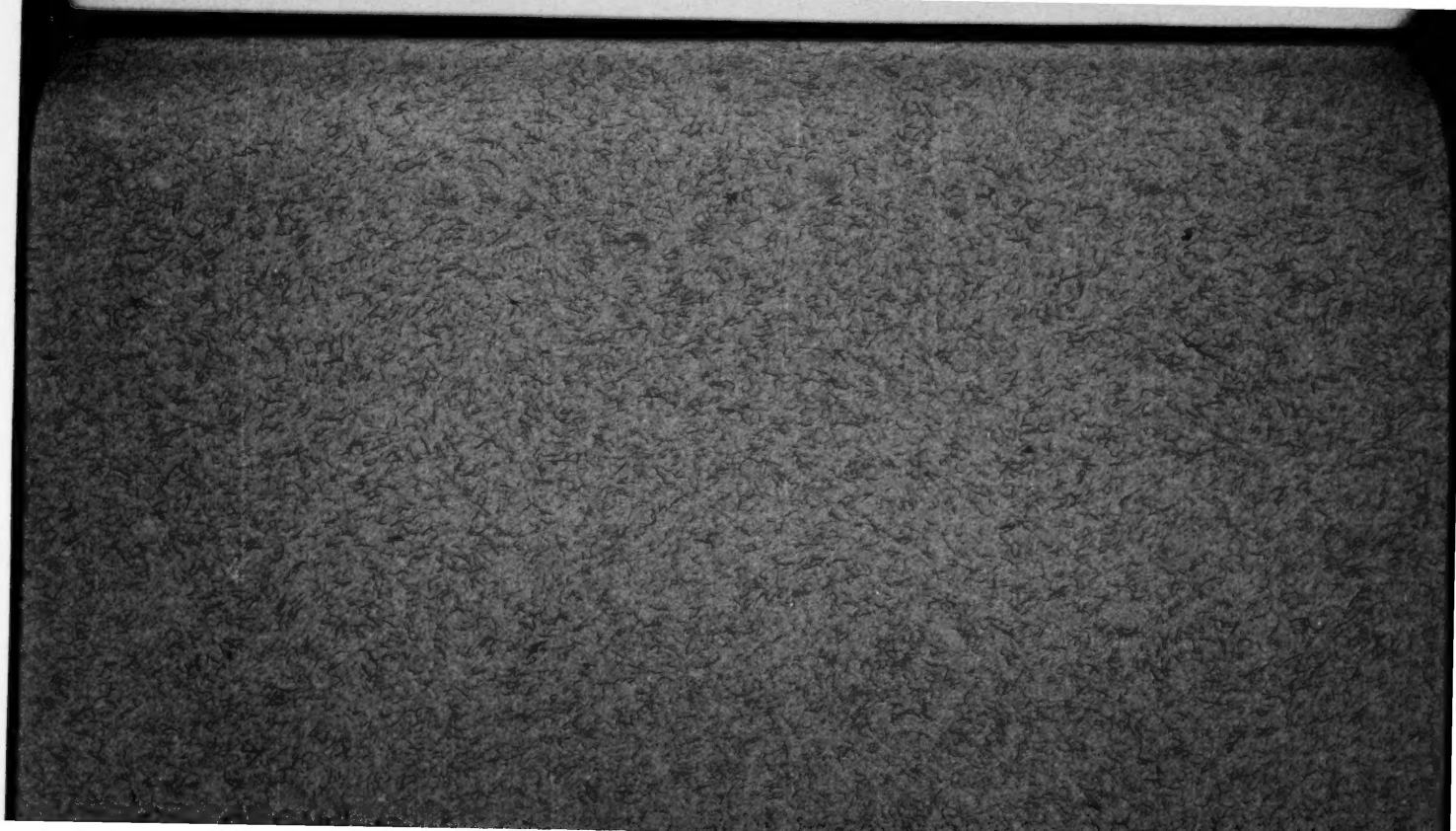

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I

OPINIONS BELOW

The decree of the trial court granting the temporary writ of injunction. (R. 121).

The opinion of the Supreme Court of Alabama is not officially reported yet, but appears in 35 So. (2) 193, and at R. 134.

II

JURISDICTION

The judgement of the Supreme Court of Alabama is not a final judgment (R. 148), and hence there is no jurisdiction to grant the petition for writ of certiorari.

III

STATEMENT OF THE CASE

Errors and omissions of petitioners in their statement of the matter involved are corrected herein.

The cause was not presented to the trial court for writ of injunction, but for writ of temporary injunction. (R. 118-119). The trial court granted a temporary injunction only (R. 121-125); and the judgment entered by the Alabama Supreme Court was one dissolving the temporary injunction and remanding the cause to the circuit court (which is the trial court) "for further proceedings therein." (R. 148).

There was no action on the part of the Board of Equalization of Jefferson County to increase the assessed value of all taxable units in Jefferson County, Alabama. Such action was to reappraise and equalize the county. (R. 52,136).

The board did not in 1946 or at any time adopt any plan to increase the assessments of taxable real property. The board in 1946 commenced for the second time its review and equalization of the county. (R.55). The record does not disclose that the county was divided into four districts, or that any division whatever was made. It discloses that it is impossible to complete a detailed and thorough review of the individual units of real property in the county in less than a four year period of time. (R. 56,140).

The record does not disclose that the board had the idea to increase assessments to sixty per cent of the market price, but to equalize such assessments at sixty per cent of the market price. (R. 56).

In 1946 the board did not increase the assessments of property lying in Shades Valley, but reviewed, reappraised, and equalized the same at sixty per cent of the market value. (R. 55, 138).

In 1947 the board did not increase the assessments of property lying in Elyton Land Company Survey. Such assessments were reviewed, reappraised, and equalized. Some assessments were increased, and others were left unchanged. In addition to this area, units totaling four thousand in number in all sections of the county were reviewed and increased because of new buildings and improvements. (R. 55-139).

The record does not disclose the assessed value of the property in the county in 1947 which was not reviewed and reappraised by the board in said year.

In fact, petitioners allege in their bill in the trial court: "complainant (petitioners) has been unable to ascertain the percentage of the fair and reasonable value upon which property generally throughout Jefferson County is assessed * * *." (Explanatory matter inserted) (R. 30).

It does not appear that the disparity in assessed values ranged from ten to sixty per cent. It appears merely that the increases in assessed valuations made by the board for 1947 ranged from ten per cent to sixty per cent. (R. 55). This is confirmed by a finding of fact by the Alabama Supreme Court. (R. 141).

The Alabama Supreme Court did not find that an inequality in assessed values existed. It made such asumption for the sake of argument only. (R. 141).

The trial court and the Alabama Supreme Court found as a fact that there was no fraud, bad faith, or evil design on the part of the board. (R. 133,140).

The Alabama Supreme Court found as a fact that it takes four years to review and reappraise all of the taxable units in Jefferson County "when the board of equalization in all of its working time does all that it can humanly do." (R. 141).

Further relevant facts appear in the opinion of the Alabama Supreme Court, and will not be repeated here.

IV

SUMMARY OF ARGUMENT

Point 1

A judgment of the Alabama Supreme Court dissolving a temporary injunction of the trial court, and remanding the cause to the trial court for further proceedings therein, is not a final judgment.

Moses v. the Mayor,
82 U. S. 387, 15 Wall. 387

Strumpf v. Alabama,
319 U. S. 750

Polakow's Realty Experts, Inc., v. Alabama,
319 U. S. 750

Davis v. Alabama Great Southern Railroad Co.,
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Glover v. Robinson,
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Trump v. McDonnell,
112 Ala. 256, 20 So. 524

State v. Seminole Bottling Co.,
235 Ala. 217, 178 So. 237

Point 2.

After reversal of the decree of the trial court and remandment of the cause for further proceedings, the case is opened for retrial, amendment of the pleadings, and adding new parties.

Equity Rule 28(d), Appendix Title 7,
Code of Alabama 1940

Kirby v. Puckett,
199 Ala. 594, 75 So. 6

West v. Holman et al,
227 Ala. 248, 149 So. 685

Point 3.

The opinion rendered by the Alabama Supreme Court in this case is not binding upon such court on a second appeal of the same case.
Section 28, Title 13, Code of Alabama 1940.

Point 4.

There is no denial of the equal protection of the laws under the 14th Amendment of the Federal Constitution in assessing property for taxation, in the absence of a systematic and intentional discrimination.

Sunday Lake Iron Co. v. Township of Wakefield,
247 U. S. 350

Rowley v. Chicago & N.W.R. Co.,
293 U. S. 102

Southern R. Co. v. Watts,
260 U. S. 519

Greene v. Louisville & Interurban R. Co.,
244 U. S. 499

Raymond v. Chicago Union Traction Co.,
207 U. S. 20

Great Northern R. Co. v. Weeks,
297 U. S. 135

ARGUMENT

1.

It is first urged by respondent that the judgment sought to be reviewed is not final, within the meaning of section 237(b) of the Judicial Code (U.S.C.A. Title 28, section 344(b)) as revised by Title 28 U. S. Code section 1257(3).

Points 1, 2 and 3 support this argument.

The prayer of petitioners in their bill was for a temporary injunction enjoining the putting into effect of the increases of assessments against petitioners; and that upon final hearing said injunction be made permanent. (R. 9-10).

Submission of the cause to the trial court was for temporary injunction only (R. 118, 119); and the injunction granted was temporary only. (R. 121-125).

The Supreme Court of Alabama entered judgment dissolving the temporary injunction and remanding the cause to the trial court "for further proceedings therein."

(R. 148). No other directions were given to the trial court.

The cause must yet be tried and submitted for final decree to the trial court, and final decree rendered therein.

The rule in Alabama as to the effect of reversal is stated in **West v. Holman, et al, supra:** "The reversal on the former appeal had the effect of setting aside the former submission and opening the case for retrial, the amendment of the pleadings, and adding new parties."

In Alabama the pleadings may be amended as a matter of right at any time before final decree. Equity Rule 28 (d), **supra**, provides:

> "Amendments to bills may be filed as a matter of right at any time before final decree, by striking out or adding new parties, or to meet any state of evidence which will authorize relief; and amendments to answer may be filed as a matter of right at any time before final decree, so as to set up any matter of defense except as limited by Rule 14; but if an amendment be filed at the hearing, to bill or answer, the opposite party shall be entitled to a continuance as a matter of right if the amendment requires the taking of additional testimony, and in this event, both parties shall have the right to take additional testimony without a special application, but the court shall impose such terms upon the party amending at the hearing, not extendnig beyond the payment of all the costs, as may be fair and equitable."

This rule includes amendments made after reversal and remandment of a cause. **Kirby v. Puckett, supra.**

Petitioners apparently admit these rules as applying generally, but seek to avoid the application thereof because the respondent filed a sworn answer in the cause. This fact is immaterial. No agreed statement of facts was entered into. The answer is a pleading and may be amended at any time before final decree.

Filing the sworn answer was in accordance with Alabama law. Section 1055, Title 7, Code of Alabama 1940 provides:

> "Upon the hearing of the application for injunction, the sworn answer of the defendant may be considered as well as the bill, and both sides may introduce affidavits of themselves or other witnesses; and upon consideration, the judge must determine whether the injunction be granted or refused."

In fact, the respondent was required to answer the bill within thirty days. Equity Rule 17, Appendix Title 7, Code of Alabama 1940 provides:

> "A defendant must demur, plead, or answer within thirty days after service of the summons, or within thirty days after the date of receipt by the register of a return receipt showing that the defendant has been served by registered mail, or within thirty days after the period specified in an order of publication if service by publication was ordered and has been perfected."

The bill was filed July 11, 1947 (R. 1) and the last submission was had on November 26, 1947 (R. 118), which was greatly in excess of thirty days from the filing of the bill.

In Alabama an opinion rendered by the Supreme Court in a case is not binding upon the court on a second appeal of the same case.

Section 28, Title 13, Code of Alabama 1940 provides:

> "The Supreme Court, in deciding each case when there is a conflict between its existing opinion and any former ruling in the case, must be governed by what, in its opinion at that time is law, without any regard to such former ruling on the law by it; but the right of third persons, acquired on the faith of the former ruling, shall not be defeated or interfered with by or on account of any subsequent ruling."

This is contrary to the common law; and the only cases on this point cited by petitioners were decided prior to the enactment of this statute.

In **Trump v. McDonnell, supra,** a decree dissolving a temporary injunction was held by the Alabama Supreme Court to be not a final decree, notwithstanding an answer of the defendant and the taking of testimony in the trial court.

In **State v. Seminole Bottling Company, supra,** the Alabama Supreme Court dismissed an appeal from a decree dissolving a temporary injunction, on the ground that it was not a final decree; and held that such decree was appealable as an interlocutory decree only, and that the time for taking an appeal from an interlocutory decree had expired.

In **Moses v. the Mayor, supra,** the United States Supreme Court passed upon the question here involved under Alabama law. The Supreme Court of Alabama rendered a decree reversing the order of the trial court and

dissolving a preliminary injunction, from which decree the aggrieved party appealed to the United States Supreme Court, which dismissed the appeal because it was not taken from a final decree. An answer had been filed in the trial court; a fact that did not make the decree final.

As stated in **Moses v. the Mayor, supra,** the decree is "obviously" not final.

2.

In further opposition to the petition, respondent argues that the State Court has not decided a federal question contrary to the decisions of this Court.

The decisions cited in support of Point of Law 4 hold that there must be a systematic and intentional discrimination in order to render invalid an inequality in assessed values of property.

The Alabama Supreme Court did not find that an inequality existed; but did find that there existed no systematic or intentional discrimination.

There is therefore no basis for the review of the decision of the Alabama Court.

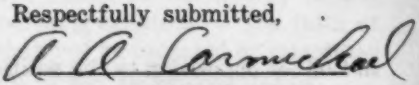
The basis of the action of the board in assessing property at 60% of its reasonable market value instead of 100% is section 17, Title 51, Code of Alabama 1940, which provides:

"All taxable property within this state shall be assessed for the purpose of taxation at sixty percent of its fair and reasonable market value."

CONCLUSION

It is respectfully submitted that (1) the judgment sought to be reviewed is not final, and (2) no federal question has been decided contrary to the decisions of this Court; and hence that the petition for writ of certiorari be denied.

Respectfully submitted,



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